

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA
CASE NO.: 00-143

INQUIRY CONCERNING JUDGE SUPREME CT. CASE NO. SC00-2226
CYNTHIA A. HOLLOWAY;

_____/

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS
BY THE HEARING PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION

The Hearing Panel of the Judicial Qualifications Commission ("JQC") respectfully submits the following Findings, Conclusions and Recommendations pursuant to Article V, § 12(a)(1), (b) and (c), of the Florida Constitution.

Judge Cynthia A. Holloway, a Circuit Judge of the Thirteenth Judicial Circuit of Hillsborough County, Florida, was charged by the Investigative Panel of the JQC with certain violations of the Code of Judicial Conduct arising from her conduct as a Circuit Judge. The charges concern events of July 10 and July 29 of 1999 and a series of events concerning a particular family law matter on February 24, March 3, July 19 and August 8 of 2000.

Generally, the Investigative Panel charged that in 1999 Judge Holloway issued an injunction to help a friend stop the removal of trees in front of that friend's law office; and, in a separate incident she attempted to assist her brother, a petitioner in a dissolution suit, on a scheduling matter before another Circuit Judge. In 2000 she was charged with improper conduct on four different occasions concerning a friend's child custody case which was pending before another circuit court judge. The case was Adair v. Johnson, Case Number 97-11697, in

which a friend, Ms. Robin Adair, was seeking the custody of her daughter, Parker,

¹ in an acrimonious proceeding with Mr. Mark Johnson, the father of the child. Robin Adair was the sister of a close friend of Judge Holloway and had also become friendly with the judge.

It was generally alleged that Judge Holloway abused her judicial powers by contacting a Tampa Police Detective who was investigating possible abuse of the child; that she abused her powers by attempting to influence another Circuit Judge to give her friend, Robin Adair, an emergency hearing and in doing so made a crude remark to the judge; and further, that she twice gave untruthful testimony in her deposition in the Adair case and in an errata sheet prepared and signed by her after the deposition.

The two charges from 1999 are unrelated to the several charges in the year 2000. Judge Holloway admitted guilt as to certain aspects of the charges in 2000 but has denied any untruthfulness. (T. 33-4, 651-2).

The charges are contained in the Amended Notice of Formal Charges served June 19, 2001, and signed by the Chairman of the Judicial Qualifications Commission, Judge James Wolf on behalf of the Investigative Panel. The formal charges are quoted in full in these Findings, Conclusions and Recommendations along with the conclusions or other disposition as to each charge by the Hearing Panel.

The charges allege violations of Canons 1, 2, 3 and 5 of the Florida Code of Judicial Conduct and assert that if true, the charges require discipline and could demonstrate a present unfitness to hold office warranting removal from office and discipline as an attorney.

The charges were tried before the Hearing Panel which received testimony and documentary evidence in Tampa, Florida, on October 15 and 16, 2001. Extensive prehearing discovery and contested motion practice had occurred. The Hearing Panel consisted of Judge James R. Jorgenson, Chairman,

¹ The minor child's name is contained in the formal charges and is thus a matter of public record. During the hearing, attempts were made at referring to the child by her initials rather than her name. Because the name is mentioned throughout the file, it will be used herein.

Judge Peggy Gehl, attorney Perry Odom, attorney John W. Frost, II and lay members Susan Gummey and Frank Coletti. Attorney John Beranek was counsel to the Hearing Panel and the Investigative Panel was represented by attorneys Beatrice A. Butchko and Timothy W. Ross as special counsel. Judge Holloway was represented by attorneys Michael Rywant and Scott Tozian.

The Amended Notice of Formal Charges dated June 19, 2001, contains seven charges which are here set forth in full followed by the Hearing Panel's findings or other disposition as to each charge. The findings indicated below were each determined by at least a two-thirds vote of the six member Hearing Panel in accordance with Article V, § 12(b) of the Florida Constitution and Rule 19 of the Judicial Qualifications Rules. In the view of the Hearing Panel, each of these findings is supported by clear and convincing evidence in accordance with In re: Ford-Kraus, 730 So. 3d 269 (Fla. 1999); In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997); and In re: Davie, 645 So. 2d 398, 404 (Fla. 1994).

As further detailed herein, this Hearing Panel concludes that Judge Holloway is guilty of certain ethical violations arising out of these charges and recommends that she be disciplined by a public reprimand by the Florida Supreme Court and a one-month suspension from office without pay.

The charges and Panel findings or other dispositions are as follows:

CHARGE:

1. You were a witness in the case of Adair v. Johnson, No. 97-11697, Circuit Court of Hillsborough County ("the Adair case"), and a close friend of Ms. Robin Adair, the petitioner in that case. During the pendency of this case you abused your powers as a judge, and improperly utilized the prestige of your office by the following actions:

(a) On or about February 24, 2000, you telephoned Detective John Yaratch of the Tampa Police Department, who was then conducting a criminal investigation involving the parties in the Adair case, and sought to influence his investigation, *inter alia*, by suggesting that an interview of the daughter of the parties be held at the Child Advocacy Center, by furnishing Det. Yaratch with your cellular phone number, and by requesting that he keep you apprised on developments in the case.

PANEL FINDING:

Guilty, but only as viewed in the overall context of this case and the further charges herein.

Standing alone, this charged conduct would probably not warrant discipline.

CHARGE:

(b) Between the time of the conversation of February 24, 2000 and approximately March 3, 2000, you again spoke with Det. Yaratch about his case, seeking to influence his investigation.

PANEL FINDING:

This charge was voluntarily withdrawn by the prosecution and thus the Panel makes no finding as to this allegation.

CHARGE:

(c) On or about March 3, 2000, you entered the hearing room of the Honorable Ralph C. Stoddard, presiding judge in the Adair case, and spoke to Judge Stoddard, about the case in the presence of others in a loud, angry, and temperamental manner, and shook your finger at Judge Stoddard. Among other things, you criticized the time it took for the parties in the Adair case to obtain an emergency hearing in Judge Stoddard's Division, criticized Judge Stoddard's leaving the daughter of the parties in the custody of a third party, stated it would be of concern to you if the respondent father might obtain custody of the child and insisted or demanded that Judge Stoddard hold an early hearing in the matter. In an attempt to influence Judge Stoddard's decision in the case, you described the petitioner and her daughter as "the two people in the world dearest to me," and stated that the petitioner was a good mother who was protective of her child. The *ex parte* contact contributed to Judge Stoddard's recusal in the case.

PANEL FINDING:

Judge Holloway has, from the beginning, admitted this was improper conduct and she has apologized to Judge Stoddard. Despite the admission of guilt to the charge, substantial evidence was presented by the prosecution and responded to by the defense concerning the details of the contact with Judge Stoddard. This evidence was in sharp conflict. The Panel finds guilt on the charge and some of the details will be further addressed herein.

CHARGE:

2. On or about March 3, 2000, while in the Chambers of Judge Stoddard you falsely suggested and/or implied that Ronald Russo, attorney of the respondent in the Adair case had an improper hold on Judge Stoddard.

(a) In addition you demeaned the judicial office by making a crude remark to Judge Stoddard by implying that the respondent in the Adair case "must have pictures (with Judge Stoddard) and a dog, and that's why somebody can get something out of you and nobody else can."

PANEL FINDING:

Guilty as charged. Judge Holloway admitted guilt as to this charge.

CHARGE:

3. On or about July 19, 2000, in Tampa, Florida, you were deposed in the Adair case by the respondent [Mark Johnson] acting pro se. Upon being duly sworn you testified as follows:

Q. Have you or anyone in your office ever contacted law enforcement about this case?

A. Yes.

Q. Who and when, if you can recall?

A. I think just to determine who was going to investigate the most recent allegation, just to find out the name of the detective attached to the file.

Q. Did you ever speak to the detective?

A. I've spoken to the detective a lot, but not necessarily about this case.
I don't recall whether I spoke to him directly or not.
I don't believe that I did.

This testimony was false or misleading because you had in fact contacted Detective Yaratch as set forth in paragraph 1(a) above.

PANEL FINDING:

Guilty as charged.

CHARGE:

4. On or about July 19, 2000, in Tampa, Florida, you were deposed in the Adair case by the respondent [Mr. Johnson] acting pro se. Upon being duly sworn you testified as follows:

Q. When did you learn that Parker [the daughter of the petitioner and respondent] had been sheltered?

A. On a Saturday [February 26, 2000] morning. I don't really recall the date or the time. I was at the baseball field, I think, or softball field.

Q. Did Cindy Tigert call you?

A. Yes.

Q. What was your reaction?

A. I was shocked.

Q. Did you do anything in response to that development in the case?

A. I don't recall being able to do anything at that point.

Q. Did you contact Ralph Stoddard?

A. No.

Q. Did you telephone him, contact him in anyway?

A. No.

Q. Did you go see him?

A. No.

The testimony was false or misleading in that you in fact did contact and speak with Judge Stoddard [on March 3, 2000] concerning the Adair case as set forth in paragraph 1(c), above.

PANEL FINDING:

Guilty as charged.

CHARGE:

5. On or immediately before August 8, 2000, you executed an errata sheet to your deposition described in paragraphs 3 and 4, stating:

(Errata Sheet)

Page 5, Line 9 – "the word 'close' should be closest."

Page 34, Line 19 – [the testimony quoted in paragraph 2 [sic] above] – This deposition was taken after I had spent three hours at the funeral of Harry Lee Coe. Upon further reflection, I do recall a brief telephone conversation with Detective Yaratch. During this conversation, I informed Detective Yaratch that I did not want to discuss the facts of this investigation but hoped that the investigation would be handled in a timely fashion.

Page 38, Line 22 through Page 39, Line 15 – [the testimony quoted in paragraph 3 [sic] above] – My responses to these questions relate to the Saturday of the emergency shelter hearing referenced on Page 38, Line 24.

Despite these purported corrections, your testimony relating to your conversation with Detective Yaratch remained false and misleading because your testimony as corrected was not a truthful or complete account of your conversation with Detective Yaratch.

The corrections further are misleading with regard to your contact with Judge Stoddard because they do not respond fully and accurately to the question propounded to you, namely, (a) "Did you do anything in response to that development in the case?"; (b) "Did you contact Judge Stoddard?"; (c) "Did you telephone him, contact him in any way?" and (d) "Did you go see him?" These questions were not restricted to any specific date and require you to disclose the [March 3, 2000] contact with Judge Stoddard described in paragraph 1(c) above, and you failed to do so.

PANEL FINDING:

Guilty as charged to the extent that the errata sheet was misleading, vague, incomplete, inaccurate, and intended to keep secret inappropriate contact with Judge Stoddard.

CHARGE:

6. On or about July 10, 1999, in Tampa, Florida, you lent the prestige of your judicial office to advance the private interest of a personal friend Jeanne T. Tate, Esquire. In furtherance of your friend's interests you drafted or participated in the drafting and subsequently signed a Temporary Injunction Order prohibiting "The City of Tampa, Sonny's Tree Service and any and all agents thereof..." from "cutting down or in any way damaging the trees" in front of Ms. Tate's law firm located on the west side of Hyde Park Boulevard, between Platt Street and Deleon Street in Hillsborough County. Said Order was executed by you without notice to The City of Tampa and/or Sonny's Tree Service and served upon a representative of Sonny's Tree Service by a City of Tampa uniform police officer at your direction. (See Temporary Injunction Order attached as Exhibit "A").

PANEL FINDING:

This charge was withdrawn by the Prosecution. The withdrawal occurred during the respondent's case after the Prosecution had presented all of its evidence on the charge and rested its case. Judge Holloway then presented her first witness, Jeanne T. Tate, who was the alleged friend mentioned in Charge 6. After this testimony by attorney Tate, Charge 6 was withdrawn by the prosecution. Thus the Panel makes no findings.

CHARGE:

7. On or about July 29, 1999, in Tampa, Florida you lent the prestige of your judicial office to advance the private interest of your brother James T. Holloway, Esquire. In furtherance of your brother's interests you entered the front office of the Honorable Judge Katherine G. Essrig, the presiding Judge in your brother's uncontested divorce and in the presence of others asked Judge Essrig to handle your brother's case out of turn as he had an airplane to catch.

PANEL FINDING:

Guilty as charged.

Findings of Fact

The following provides an overview of the case and the sequence of events leading to these proceedings. More specific findings as to certain individual charges and the legal and ethical issues involved follow.

The evidence presented was in substantial conflict on all of the contested charges and even as to the details of the charges on which guilt was admitted. Substantial documentary exhibits were introduced by both the prosecution and the defense. All of the graphic evidence as to Charge 6 and many of the photographs were unnecessary. The prosecution called seven witnesses and the defense called sixteen, three of whom were character witnesses. The Hearing Panel limits a respondent judge to three live character witnesses while allowing the introduction of unlimited character affidavits. (R. Tab 7,

Respondent's Exhs.). The transcript of the testimony is 875 pages and copies have been furnished to counsel for both sides. The transcript is designated (T. ____) herein. Extensive prehearing discovery and depositions were pursued by both sides and a great deal of time and expense was involved. Numerous affidavits as to Judge Holloway's good character were received and reviewed by the Panel. (R. Tab 7, Respondent's Exhs. and Affidavits with Respondent's Trial Brief of 10/28/01).

The Charges and Primary Issues

Charge 7 concerning Judge Holloway's appearance before Judge Katherine G. Essrig was the last charge in the order of the pleadings but the earliest in point of time. It was uncontested that Judge Holloway had a one or two sentence exchange with Judge Essrig asking her to take her brother's case (an uncontested divorce) out of order because he had a plane to catch. (T. 383-4, 665). Judge Essrig felt the request was innocuous and would have been a common occurrence had it been made by a lawyer or a party. (T. 389-90). However, the request made her feel uncomfortable because anyone overhearing it might have thought she was giving preference to a judge's relative. (T. 381, 393). Judge Essrig felt the incident was "not a big deal" and Judge Holloway agreed, stating it was just a matter of common courtesy. (T. 394 and 666). Judge Holloway admitted she made the request and the only contested issue was whether there were other people in the area who might have overheard the request. (T. 383-4, 661, 663 and Trial Brief p. 29-30). The Panel concludes that others were present. (T. 383-4, 661-3, 666-7).

We initially provide this detail on the Judge Essrig matter only to fully distinguish it from the Adair v. Johnson matter. There was no connection between the two cases nor between Judge Essrig and Judge Stoddard who was involved in the Adair v.

Johnson matter.

There was no question or dispute that Judge Holloway contacted Judge Stoddard directly and committed a serious breach of ethics in doing so both in the manner and content of that contact. (T. 65, 66, 82, 83, 88, 90-91). This violation was fully admitted by Judge Holloway and she apologized to Judge Stoddard. (T. 88, 90-91, 644-5).

The main issue in actual dispute concerning the Adair v. Johnson matter was whether Judge Holloway was untruthful in her deposition and errata sheet testimony concerning her contacts with Judge Stoddard and Detective Yaratch. Also in question was whether her contact with the detective, as admitted in her errata sheet, rose to the level of an ethical violation as an attempt to influence the detective and his investigation.

The record reveals that Judge Holloway had indeed contacted Detective Yaratch and that she had a face-to-face emotional confrontation over the scheduling of the Adair v. Johnson case with Judge Stoddard. (T. 315, 642, 644-5). The overriding issue before this Panel was whether, in her deposition, Judge Holloway intentionally misrepresented the facts surrounding her contacts with Detective Yaratch and Judge Stoddard, and whether she then intentionally misrepresented those same facts in an errata sheet to that deposition. In the errata sheet she

represented that: (1) she belatedly recalled her telephone call to the Detective; and (2) that when she denied contact with Judge Stoddard in her deposition, she was referring only to contact with him on the day Judge Stoddard ordered the child into shelter care which was a Saturday. (R. Pros. Ex. 1).

The chronology of Adair v. Johnson and Judge Holloway's involvement in it, as found by the Panel, is as follows. It is undisputed that these events occurred. However, there is no agreement as to the details of the events.

The Adair case was filed September 16, 1997. The matter concerned custody of a child named Parker. Robin Adair is the mother of the child and Mark Johnson is the father. (T. 149). The Adair/Johnson relationship had begun in California. (T. 148). After the birth of the child, Robin moved to the Tampa area where her sister, Cindy Tigert, and Cindy's husband Bruce Tigert and their children resided. (T. 149, 631-4). Judge Holloway is married to attorney Todd Alley. The Tigert family and the Holloway/Alley family were extremely close friends. (T. 631-4). They lived near each other on Davis Island and both couples had young children roughly the same age. (T. 633-4). The children and the parents spent holidays together, traveled together, and were close to being a family unit. (T. 634). Cindy Tigert and Judge Holloway considered each other best

friends. (T. 630). Robin Adair and her daughter Parker spent significant time with the Tigert family and became friendly with Judge Holloway. (T. 633). Robin Adair lived in a small house on the Tigert property for a portion of the time. (T. 633).

Mark Johnson was represented by a series of attorneys but eventually took over his own representation. (T. 165-7). Mr. Johnson became adept at filing pleadings, taking depositions and acting as his own lawyer. (See: Adair v. Johnson Docket Sheets). Johnson took Judge Holloway's deposition and there was clear animosity between them. Judge Holloway's testimony at her deposition and in a later errata sheet became the central most important contested matter in the case. Mr. Johnson's testimony before the Commission showed that he was knowledgeable concerning family law proceedings in Florida courts. He was also well aware of the JQC and its functions.

The Adair v. Johnson case was extremely acrimonious. On November 18, 1998, over a year after the case had been filed, Judge Holloway testified as a fact witness under subpoena before Judge Stoddard. (See 11/18/98 Transcript in evidence). Her testimony concerned possible inappropriate conduct of a sexual nature concerning the actions of the child Parker. (T. 636-7). Mr. Johnson was present during this hearing and was inflamed by Judge Holloway's testimony. (T. 154-5, 158-9, 161-2).

On June 15, 1999, Cindy Tigert, Judge Holloway and other friends were having dinner at a restaurant/bar in Tampa named Jackson's. By chance, Mr. Johnson was also a restaurant patron and struck up a conversation with Judge Holloway. (T. 153). The details of the conversation are in dispute but it appears Mr. Johnson expressed his resentment to Judge Holloway concerning her testimony of November 18, 1998. At the hearing before this Panel, there was substantial hearsay evidence that Mr. Johnson decided to go after Judge Holloway before the Judicial Qualifications Commission. (T. 646). Mr. Johnson denied it, but was repeatedly quoted by others as having said that he would "get her job" referring to Judge Holloway. (T. 646). On July 15, 1999, Judge Holloway again testified as a subpoenaed witness before the circuit court. (T. 152). At this point her testimony concerned the Jackson's restaurant incident. (T. 152, 646).

A teacher at the school attended by Parker made a report of possible sexual abuse implicating the child's father, Mr. Johnson. (T. 310-11, 642-3). Judge Holloway learned of this report and on February 24, 2000, placed a telephone call to the officer assigned to the case, Detective Yaratch. (T. 642). Again, what was actually said during this telephone conversation is disputed in most of the details. (T. 644). However, Judge

Holloway's version is that she called the detective to make sure the case did not "fall between the cracks" and told Detective Yaratch that although she knew none of the facts, she hoped he would proceed rapidly with an interview of the child at the facility known as the Child Abuse Center (CAC). (T. 316, 644). Detective Yaratch testified he thought it inappropriate for Judge Holloway to have called him but the Detective agreed that she did not ask him to do anything inappropriate or anything more than he would have done anyway. (T. 325, 326, 337-9). Detective Yaratch stated he was not influenced by the call and that an interview of the child did occur at the CAC at the suggestion of Judge Stoddard. (T. 342-3).

Two days after the phone call to Detective Yaratch, a hearing occurred on Saturday, February 26, 2000, before Judge Stoddard. As a result of this hearing and to both parties' surprise, Judge Stoddard ordered that the child be placed in shelter care with a teacher from her school. (T. 106-109). The mother Robin Adair was shocked as she assumed the child would be placed with her. (T. 639). This ruling took the child temporarily away from both parents. Both Robin Adair and her sister Cindy Tigert, who attended the hearing were outraged by the ruling. (T. 638-9). The two women immediately contacted Judge Holloway at a ball-field attending a softball game with

her children. Judge Holloway was also shocked and tried to calm the two sisters who were near hysteria. (T. 638-9). On Monday, February 28, 2000, she learned a hearing on the shelter status of the child was not scheduled until Monday, March 8, 2000 — 8 days later. This concerned her greatly. (T. 643-5).

On Wednesday, March 3, 2000, Judge Holloway visited Judge Stoddard in his chambers and questioned him strongly as to why a hearing could not be scheduled sooner. (T. 57, 59, 60, 66). She alleged that the attorney representing Mark Johnson had some sort of hold on the judge and made a crude comment regarding someone having obscene pictures of Judge Stoddard with a dog. (T. 60-66). Judge Holloway admitted her conduct was an ethical breach and was outrageous. She agreed she was overly emotional and had made a terrible mistake. (T. 644-5). She apologized to Judge Stoddard and he accepted the apology, believing it to be genuine. (T. 88).

On March 6, 2000, Judge Stoddard recused himself from the Adair v. Johnson case, in part due to the contact by Judge Holloway. Other problems in the case concerning other individuals were already before Judge Stoddard and might have resulted in his recusal in any event. (T. 84). Judge Vivian Maye was assigned to the case and held a lengthy but inconclusive hearing on March 9, 2000, regarding the continued

shelter status of the child. Another hearing was held by Judge Maye on March 20, 2000.

Judge Holloway was aware that Mr. Johnson had reported her to the JQC and that the JQC was actively investigating her conduct. Judge Holloway believed Johnson was furnishing information to the JQC's investigator and that Mr. Johnson was attempting to "set her up." (T. 645-6, 647).

On July 19, 2000, Mr. Johnson, acting pro se, took Judge Holloway's deposition. Judge Holloway was represented by counsel, her husband Todd Alley, and the deposition indicates that questions regarding her contacts with Detective Yaratch and Judge Stoddard were asked and answered as quoted in charges 3 and 4 herein. (R. Pros. Exh. 1). An errata sheet to the deposition signed by Judge Holloway was filed on August 8, 2000, some 19 days after the deposition was transcribed. The errata sheet is contained in Charge 5. The final hearing in the Adair v. Johnson case occurred in February of 2001.

Charge 1(a) - Contact with Detective Yaratch

Based upon the testimony of both Detective Yaratch and Judge Holloway's admissions, the Panel concludes that Judge Holloway did call the Detective and did suggest to him that he promptly proceed to interview the child at the Child Abuse Center. (T. 316, 334, 642). Detective Yaratch testified that he thought the

call was inappropriate but that Judge Holloway did not attempt to influence him to do anything improper. (T. 337-9).

The Panel concludes that this charged conduct would not warrant discipline under the Code of Conduct governing judges. We recognize the somewhat similar nature as to the conduct of Judge Brown in the case of In re: McMillan, 26 Fla.L.Weekly S522 (Fla. 2001). We also recognize the somewhat similar conduct of Judge Frank in the case of In re: Frank, 753 So. 2d 1228, 1240 (Fla. 2000). In both of these cases, judges contacted either the police authorities or the Florida Bar and their conduct was held not inappropriate nor was it found to be unethical. A judge is at liberty to contact appropriate authorities concerning matters within the jurisdiction and purview of those authorities, here Judge Holloway did little more.

However, in the overall context of this case and in view of the other closely related charges, the Panel concludes that when Judge Holloway telephoned Detective Yaratch on February 24, 2000, she was in fact attempting to influence Detective Yaratch to act in a manner which would be favorable to her friend Robin Adair's side of the case. These findings are based upon the testimony of Detective Yaratch and indeed the admissions of Judge Holloway herself who testified that she was extremely concerned that the child be protected and that the case be

decided in favor of her friend, Robin Adair, and her closest friend, Cindy Tigert. We caution that this single phone call to the detective would not warrant discipline if it were not a part of the entire unfortunate series of events.

Charge 1(a) and 2(a) - Contact with Judge Stoddard

Both of these charges concern the single incident which lasted no more than minutes and occurred on March 3, 2000, in the hearing room of Judge Stoddard. From the beginning, Judge Holloway has admitted that this contact was absolutely improper. (T. 33-4). Her explanation is that she was upset and emotionally involved in the case which concerned the sister of her best friend, and a child she had grown close to. (T. 34, 633-5). Although such motivation is understandable, her actions were entirely improper and certainly cannot be tolerated by a sitting circuit judge. We recognize that her admission of guilt and an apology for the conduct should be taken into consideration. As stated by this Court in In re: Davey, 645 So. 2d 398, 405 (Fla. 1994), "When a judge admits wrongdoing and expresses remorse before the Commission, this candor reflects positively on his or her fitness to hold office and can mitigate to some extent a finding of misconduct." We also note that Judge Stoddard testified that he was shocked, dismayed and hurt, but that in his opinion, Judge Holloway was a good judge,

exercising "deference and respect" and that he "had the highest opinion of her abilities as a judge." (T. 89, 92).

Again the details of this charge are in striking dispute. However, Judge Holloway has admitted guilt as to these charges and we will not burden this Court with the further allegations and details as to precisely and exactly what was said by whom.

We do find, however, that the disqualification of Judge Stoddard was not due solely to the Holloway contact. We further find that Judge Holloway was not attempting to affect the shelter status of the child by contacting Judge Stoddard, and that this contact did not actually result in a prolonging of the shelter status. The new Judge, Judge Vivian Maye, held a prompt hearing on the continued shelter status of the child.

Charges 3, 4 and 5 - The Deposition and the Errata Sheet

These three charges concern the deposition of Judge Holloway as taken by Mr. Johnson on July 19, 2000 and the errata sheet of August 8, 2000 which attempted to correct her previous testimony regarding contacts with Detective Yaratch and contacts with Judge Stoddard. The prosecution's argument is that Judge Holloway intentionally lied in her deposition and then intentionally lied in her errata sheet.

The Panel rejects the assertion that Judge Holloway intentionally lied in her deposition and then intentionally lied

in her errata sheet. However, the Panel does find an ethical violation because both the deposition testimony and the errata sheet were at best misleading. The charges are in terms of "false or misleading" testimony.

It was simply unacceptable that Judge Holloway would testify that she had absolutely no contact with Judge Stoddard when everyone present in the room at her deposition knew she had in fact directly contacted Judge Stoddard on March 3, 2000, and that shortly thereafter he disqualified himself in the case. We find that the questions asked on deposition fairly called for a response admitting the contact with the judge and we do not accept Judge Holloway's explanation that she intended and planned to answer absolutely no deposition questions regarding her contact with Judge Stoddard because she knew this was the subject of the JQC investigation prompted by Mr. Johnson's complaints. (T. 656-7). Even when the errata sheet was filed, Judge Holloway did not admit to the contact with Judge Stoddard, but equivocated as to the meaning of her answers. The errata sheet as to Detective Yaratch was misleading in that it was incomplete.

Therefore the Panel finds that the testimony and errata sheet were misleading and thus finds Judge Holloway guilty as to these charges which alleged the testimony was "false or

misleading."

Charge 7 - Asking a Favor for Her Brother

The Panel finds that Judge Holloway asked Judge Essrig for a scheduling favor as to her brother. As indicated by Judge Essrig, this would have been a completely normal request had it been made by a lawyer, a party or indeed a witness. (T. 389). Unfortunately the request was made by a judge and stated in a fashion so that other persons in the area of Judge Essrig's hearing room could well have overheard it. Judge Essrig herself testified that statements might well have been overheard by others and Judge Holloway's own testimony did not dispute this fact. (T. 380-384, 661, 663, 666-7). Indeed, this was the only thing about the request which concerned Judge Essrig. (T. 393-4). The Panel accepts the testimony of Judge Essrig and finds a violation as to this Charge.

RECOMMENDATION OF DISCIPLINE

Judge Holloway has served as a circuit judge and before then as a county judge. As an attorney, she was respected and successful. She was appointed by two different Governors and she has been a respected and competent member of the judiciary. No evidence points to incompetence on the bench and the evidence is overwhelming that she is an intelligent and competent jurist, extremely hardworking and respected by the attorneys appearing

before her, the parties who litigate before her and the other judges in the community with whom she works. The Panel concludes that the appropriate punishment is discipline in the form of a public reprimand before this Court, see In re: Frank, supra, and a suspension. The Panel thus recommends Judge Holloway be found guilty in part as to the charges herein and that she be reprimanded and suspended without pay for thirty

days. She should be held responsible for reasonable costs to be determined by the Hearing Panel.

SO ORDERED this 16th day of January, 2002.

**FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION**

By: s/s/ JAMES R. JORGENSEN
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